

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOE HAND PROMOTIONS, INC.,)	Case No.: 10-CV-01614-LHK
)	
Plaintiff,)	ORDER REGARDING JURY TRIAL
)	DEMAND
v.)	
)	
THOMAS RICH MCINNIS, et al.,)	
)	
Defendants.)	
)	

This case is currently set for a jury trial to commence June 20, 2011. However, in reviewing the docket, it appears that Defendants have waived any right to a jury trial by failing to properly serve and file a demand for a jury trial. Pursuant to Federal Rule of Civil Procedure 38(b), a party may demand a jury trial by:

- (1) serving the other parties with a written demand--which may be included in a pleading--no later than 14 days after the last pleading directed to the issue is served; and
- (2) filing the demand in accordance with Rule 5(d).

It does not appear that Defendants demanded a jury trial, either in their Answer or through any other document filed with the Court.

Pursuant to Rule 39(b), when a jury trial is not properly demanded, the issues are to be tried by the court without a jury. The district court has limited discretion to order a jury trial, upon motion, where a jury trial was not properly demanded. Fed. R. Civ. P. 39(b). “That discretion is

1 narrow, however, and does not permit a court to grant relief when the failure to make a timely
2 demand results from an oversight or inadvertence.” *Pac. Fisheries Corp. v. HIH Cas. & Gen. Ins.*
3 *Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001) (quoting *Lewis v. Time Inc.*, 710 F.2d 549, 556-57 (9th
4 Cir. 1983)). A pro se litigant’s good faith mistake as to the deadline for demanding a jury trial is
5 not a sufficient basis to grant relief from an untimely jury demand. *Zivkovic v. Southern California*
6 *Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

7 Accordingly, it appears that this case must be tried by the Court, and not a jury. If
8 Defendants believe that they served and filed a jury demand in compliance with Rule 38, they must
9 notify the Court and provide documentation showing proper service and filing of the demand by
10 Monday, June 6, 2011. Otherwise, the case will be tried by the Court on June 20, 2011 at 9 a.m.
11 In order to ensure that Defendants receive timely notice of this deadline, court staff will call
12 Defendants and inform them of this Order. A copy of this Order will also be mailed to Defendants’
13 addresses.

14 **IT IS SO ORDERED.**

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16 Dated: June 1, 2011

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19 LUCY H. KOH
20 United States District Judge
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